IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 442 of 2005

LRS OF SHAMUMAL & ANR
V/S
LRS OF GHISULAL

Mr. BK THANVI, for the appellant / petitioner

Mr. AD CHARAN, for the respondent

Date of Order : 27.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant at length and gone through the judgment of the learned lower Appellate Court.

Arguing the appeal, it was pointed out that at some place, learned lower Appellate Court has erred in appreciating the evidence of the parties, as it has proceeded with the assumption of absence of pleadings on the side of the defendant, which amounts to misreading of the pleadings, and therefore, the findings are vitiated. Learned counsel read to me the written-statement in conjunction with the judgment of the learned lower Appellate Court, and pointed out that the absence of pleading assumed by the learned lower Appellate Court is wrong, inasmuch as, in para-61, the learned lower Appellate Court has observed that there is no pleading on the side of the defendant about any agreement having been entered into

regarding sale of the shop, and any earnest money having been paid, while as a matter of fact, in the written-statement, there is pleading. True it is that this part of the assumption of the learned lower Appellate Court is wrong.

In that view of the matter, in order to re-appreciate the evidence, I requested the learned counsel for the appellant to read the statements of the plaintiff, Roshal Lal himself in extenso, as the plaintiff Ghisu Lal had already expired before his statements could be completed.

Admittedly, the suit was filed for eviction on the ground of reasonable and bonafide necessity of Roshan Lal, who was coming of the age, and Ghisu Lal wanted Roshal Lal to establish in cloth business. The suit was filed in the year 1971, at which time, Roshan Lal was 18 years of age. The appeal has been decided by the learned lower Appellate Court now on 9.9.2005, obviously by then, even Roshan Lal has crossed 50 years of age. It is not in dispute that during pendency of the suit, Roshan Lal had taken on rent another shop in Rui Katala belonging to Nathibai, and there he started business. It has also come on record that the rented shop is smaller in size, and is only a single storey, apart from the fact that the market is not suited for the business Roshan lal wants to carry on. Pleadings have been amended from time to time, and these facts have come on record.

Initially, the defendant contended that the alleged need is a bare desire or wish. Then when Roshan Lal took the premises on rent it was sought to be pleaded that it is only camouflage to evict the tenant, but now from the evidence, it transpires that the taking of shop on rent was a manifestation of genuine need of the plaintiff, and in order to occupy himself, he took the shop. Significantly, the plaintiff Roshan Lal's statements commenced on 1.8.90, and were completed in the year 1998, may be for whatever reasons, and significantly, in cross-examination, the defendant offered to provide accommodation in the ground floor of the defendant's own residence, so as to enable the plaintiff to carry on his business. Of course, that offer was denied being not suitable, as the business can be carried on only in the market. However, that does show that by then it no more remained the dispute that the need of the plaintiff as claimed was not a mere wish or desire, but is a need.

In this background, after appreciating the entire statements of the plaintiff Roshan Lal, in conjunction with the other material on record, in my view, even on re-appreciation, may be for different reasons, I am at one with the findings of the learned lower Appellate Court on the question of reasonable and bonafide necessity, comparative hardship, and partial eviction.

Thus, the appeal does not involve any substantial question of law. The same is, therefore, dismissed

summarily.

At the request of the learned counsel for the appellant, the appellant is given one and a half year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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